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Supreme Court of the United States

---------- TERM, 1950

No. 796

WILLIAM JOSEPH HUDSON, PETITIONER,

versus

UNITED STATES OF AMERICA, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF

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TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

The petition of William Joseph Hudson respectfully shows to the Court:

A. Summary statement of matter involved.

This is a petition for a writ of certiorari directed to the United States Court of Appeals for the Fourth Circuit to review a judgment of that Court in this case filed on March 10, 1950 (R. 98, 99). The case was begun by an indictment filed against the petitioner in the United States District

Court for the Eastern District of South Carolina charging the petitioner with two crimes against the United States. The petitioner was charged with transporting an automobile in interstate commerce, knowing it to have been stolen, contrary to 18 U. S. C. 2312, and with receiving an automobile, constituting a part of interstate commerce, knowing the automobile to have been stolen, contrary to 18, U. S. C. 2313.

Section 2312 of U. S. C. 18, the section of the United States Code with which we are primarily interested reads as follows:

"Whoever transports in interstate or foreign commerce a motor vehicle or aircraft, knowing the same to have been stolen, shall be fined not more than $5,000.00 or imprisoned not more than five years, or both."

Honorable George Bell Timmerman, Presiding Judge of the Eastern District of South Carolina, directed a verdict as to the second count in the indictment and submitted the first count to the jury. The jury found the petitioner guilty and the Honorable Presiding Judge imposed a sentence upon the petitioner of two years imprisonment and a fine of one thousand ($1,000.00) dollars on October 28, 1949. From that sentence and judgment the petitioner appealed to the United States Court of Appeals for the Fourth Circuit.

The petitioner is thirty-eight (38) years old, married, has one child and lives in Seaford and Wilmington, Delaware. For two years prior to his trial he was engaged in the construction of houses. He had also bought and sold some automobiles and has had an automobile dealer's license for nine or ten years. In January, 1949, petitioner met a man named John Allen who introduced him to Francis Raioni, who had a Chrysler automobile to sell. (R. 34-35.)

Petitioner tried to sell the automobile for Francis Raioni, who wanted one thousand ($1,000.00) dollars for it, but was unable to do so because the price had gone down on large second-hand automobiles. (R. 36.) Petitioner bought the automobile from Raioni for seven hundred ($700.00) dollars and Raioni identified himself with an army card, a New York State driver's license, and a bill of sale for the automobile. (R. 37.) Petitioner had driven other automobiles to the southern part of the United States and he had contacts there to sell automobiles. (R. 38.) He had his building business to take care of so he could not leave to drive South with this Chrysler until the night following the day on which he purchased it. (R. 38.) When petitioner bought the automobile he thought Raioni was giving him the owner's certificate and the title also, and there was nothing done that would in any way arouse his suspicion that the car was stolen. (R. 45-46.) After petitioner purchased this automobile he took it to Second and Walnut Streets in Wilmington, Del., and stored it on a public open storage lot and on the next afternoon he went for it preparatory to driving South with it. (R. 40.) When the Petitioner purchased this Chrysler automobile, he checked the body number and it corresponded but he did not check the motor number. He never knew that the motor number did not correspond to the number on the papers given him by Raioni until Mr. Osborne, an F. B. I. agent, told him that they did not correspond. The only difference, then, was that a three on the paper was supposed to be an eight. (R. 40-49.) It is a dirty job to check the motor number on an automobile and if the body number checks there is little chance of the motor number being wrong. The trip South was driven in caravan in three cars. Petitioner drove one car. A man named Robert Edmund James drove the Chrysler in question and John Allen drove a third. Petitioner had

known both James and a brother of his for some time and they both had worked for petitioner. Somewhere along the way John Allen left petitioner and James and these two men continued on their way to Columbia, S. C., the petitioner driving a Pontiac and James driving the Chrysler. Upon arriving in Columbia, S. C., petitioner and James drove the Chrysler across the Congaree River to West Columbia where they offered to sell the automobile for fifteen hundred ($1,500.00) dollars. (R. 42-43.) They were told to come back in the morning and they returned to Columbia, S. C., where they were arrested and were told for the first time that the automobile was stolen. (R. 44-45.) On the trip to Columbia, S. C., the registration Card was left in the glove compartment and the New York tags were left on the automobile. (R. 47-48.) The Chrysler automobile belonged to a Mr. Mirabile of Brooklyn, New York, and was stolen from a public garage, in Brooklyn, N. Y., on December 31, 1948.

At the trial of the case the United States proved the theft of the automobile and the finding of the automobile two weeks later in the petitioner's possession in Columbia, South Carolina. It was admitted by the Government that such a man as John Allen did exist and lived where the petitioner said that he lived. (R. 86.) The Trial Court conceded that there was no presumption that petitioner stole the automobile since he was not charged with that crime. (R. 33.)

The Court of Appeals for the Fourth Circuit, in a *per curium* order, affirmed the judgment and sentence of the lower court basing its findings upon the following facts:

(a) There was evidence that the automobile was purchased by the defendant at an inadequate price.

(b) The automobile was driven away in the nighttime from the section in which it was stolen.

(c) The front and rear license tags were different.

(d) When the petitioner was apprehended he told the officers that he was merely a "little wheel" in the automobile theft ring and that the "big wheel" was one Allen, the man who had introduced to him the person from whom he claimed to have purchased the stolen automobile.

(e) Other circumstances that the Court did not mention. (R. 98, 99.)

These findings by the Court of Appeals are either erroneous or are properly explained by the testimony. The automobile was **not** driven away in the nighttime from the section in which it was stolen because it was stolen in New York City and was driven away, at the time referred to by the Court, from Wilmington, Delaware, a place over one hundred miles away from New York City. The front and rear license tags on the automobile were **not** different. The testimony by Mr. Paul Lorick, a witness for the United States, was that the brackets around the license plates were different. (R. 68.) This is an entirely different thing from the licenses being different. Both the price of the automobile and the petitioner's statement about being a "little wheel" were adequately and properly explained in the petitioner's testimony.

When the Honorable Trial Judge was charging the jury the petitioner's attorney requested him to charge the following proposition of law:

> "Circumstances which would put a reasonable man on inquiry as to the car's being stolen are not sufficient, but that it has to be proven that the circumstances are such that he knew the car was stolen."

This request was refused. (R. 62.) After the request was refused the Honorable Trial Judge charged the jury on the law as he conceived it. Following the charge the petitioner's attorney, out of respect and politeness to the Court,

said, "Thank you. That's correct." Then the jury was sent out of the courtroom and the marshal was told to hold the jury outside of the courtroom door. This is the normal procedure in Judge Timmerman's Court and is done so that the Jury can be recalled easily in the event that some attorney calls a matter of law to the Judge's attention that he has omitted to instruct the jury on. Judge Timmerman then asked the attorneys:

> "Gentlemen, are there any exceptions to the charge?"

The petitioner's attorney then said:

> "I except to that part of your Honor's charge that refused to charge the request I made.
>
> "The Court: You mean your verbal request?
>
> "Mr. Graydon: Yes, sir."

Here was a clear and unequivocal exception to the refusal to charge the request made. This refusal to charge this request was made an exception on the appeal to the Court of Appeals. When considering this exception the Court of Appeals completely overlooked the exception made by petitioner's attorney in open court. The Court of Appeals in its opinion, when it discussed this point, said that when the petitioner's attorney said, "Thank you. That's correct." he agreed to the charge as given by the Court and accepted it as proper. The court could not have read the record in the case very closely if it did not see that petitioner's attorney made a proper, timely exception to the judge's charge in open court. This was a grave error on the part of the Court of Appeals, in affirming the judgment and sentence of the Trial Court.

B. Basis of the Court's jurisdiction.

It is competent for this Court to require by *certiorari* that this case be certified to it for determination pursuant to Act of June 25, 1948, C. 646, Sec. 39, 62 Stat. 992, eff. Sept. 1, 1948, Sec. 1254, Title 28, United States Code.

C. Questions presented.

(1) Did the Court of Appeals err in refusing to reverse the verdict and judgment of the Trial Court and to enter judgment for the petitioner on the ground that the entire case was based upon circumstantial evidence and that as a matter of law these circumstances were not sufficient to base a verdict of guilty upon, in that, the circumstances did not all concur to show that the petitioner committed the crime and knew that the automobile was stolen and were not consistent with the hypothesis of guilt and were not inconsistent with any other rational conclusion and did not exclude every other reasonable theory or hypothesis except that of guilt? (R. 98-99.)

(2) Did the Court of Appeals err in refusing to reverse the verdict and judgment of the Trial Court and refusing to grant the petitioner a new trial on the ground that the petitioner's attorney requested a perfectly proper charge to the jury, as follows:

> "Circumstances which would put a reasonable man on inquiry as to the car being stolen are not sufficient, but that it has to be proven that the circumstances are such that he knew the car was stolen."

Which charge was refused by the Honorable Trial Judge and such refusal constituted a reversible error. (R. 62-63.)

D. Reasons relied on for the allowance of the writ.

With respect to both of the questions herein presented the Honorable Court of Appeals for the Fourth Circuit rendered a decision in direct conflict with the decisions of other Circuit Courts of Appeal on the same matter. It has frequently been held that where the prosecution depends entirely on circumstantial evidence for conviction, it must not only be consistent with the guilt of the defendant, but it must be inconsistent with his innocence. *Morgan v. U. S.*,

(C. C. A. 10), 159 F. (2d) 85; *Strickland v. U. S.,* (C. C. A. 5), 155 F. (2d) 167; *Paddock v U. S.,* (C. C. A. 9), 79 F. (2d) 872; *Cox v. United States,* 96 F. (2d) 41. The decision in the case in hand based upon the facts there set forth was founded upon conjecture and suspicion.

The decision of the Honorable Trial Court, affirmed by the Court of Appeals decided an important question of general law in a way probably untenable and in conflict with the weight of authority. The facts proved by the United States were not sufficient to convict the petitioner and the Honorable Trial Court should have directed a verdict in favor of the petitioner. *Cox v. United States,* (C. C. A. 8) 96 Fed. (2d) 41; *Carmichael v. United States,* (C. C. A. 7) 13 Fed. (2d) 125. The charge requested by petitioner's attorney at the end of the trial was a proper charge and should have been given by the Honorable Trial Judge. *McAdams v. United States,* (C. C. A. 8) 74 Fed. (2d) 37. *Piquett v. U. S.,* 81 F. (2d) 75; *Silverman v. U. S.,* 2 F. (2d) 716; *U. S. v. Wright,* 16 F. 112; *U. S. v. Babcock,* Fed Case No. 14,187, 3 Dill. 581, 3 Cent. Law Jr. 143, 1 Cin. Law Bul. 52.

In affirming the decision and judgment of the Honorable Trial Court, the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings and has so far sanctioned such a departure by the Honorable Trial Court as to call for an exercise of this Honorable Court's power of supervision.

Respectfully submitted,

WILLIAM JOSEPH HUDSON,
Petitioner,

C. T. GRAYDON,

JOHN GRIMBALL,
Attorneys for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

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Supreme Court of the United States

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WILLIAM JOSEPH HUDSON, PETITIONER,

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THE UNITED STATES OF AMERICA, RESPONDENT

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

OPINIONS BELOW

The sentence and judgment of the Honorable Trial Court is found at page 63 of the Transcript of Record, the case having been tried October 27, 1949. The opinion of the Court of Appeals for the Fourth Circuit decided March 10, 1950, is found at pages 98-99 of the Transcript of Record but has not yet been printed in any official reporter system.

GROUND OF JURISDICTION

This Honorable Court has jurisdiction of the case pursuant to Act of June 25, 1948, Sec. 39, 62 Stat. 992, eff. Sept. 1, 1948, Section 1254, Title 28, United States Code.

STATEMENT OF THE CASE

A summary statement of the case is made in the petition filed along with this brief under the heading, "A. SUMMARY STATEMENT OF THE MATTER INVOLVED," and leave to omit the same here is prayed for the sake of brevity and economy.

ERRORS TO BE URGED

(1) The Court of Appeals erred in refusing to reverse the verdict and judgment of the Trial Court and to enter judgment for the petitioner on the ground that the entire case was based upon circumstantial evidence and as a matter of law these circumstances were not sufficient to base a verdict of guilty upon.

(2) The Court of Appeals erred in refusing to reverse the verdict and judgment of the Trial Court for failing to charge the jury,

> "Circumstances which would put a reasonable man on inquiry as to the car being stolen are not sufficient, but that it has to be proven that the circumstances are such that he knew the car was stolen."

SUMMARY OF ARGUMENT

(1) Under the applicable decisions and law the United States did not present sufficient facts to convict the petitioner of transporting an automobile in interstae commerce, knowing it to have been stolen. The circumstantial proof presented by the United States against petitioner was not consistent with his guilt and was not inconsistent with petitioner's innocence. The facts and circumstances proved by the United States were just as consistent with petitioner's innocence as with his guilt and the evidence was insufficient to sustain a verdict of guilty. *Morgan v. U. S.*, 159 F. (2d) 85; *Strickland v. U. S.*, 155 F. (2d) 167; *Cox*

v. U. S., 96 F. (2d) 41; *Paddock v U. S.*, 79 F. (2d) 872; *Carmichael v. U. S.*, 13 F. (2d) 125.

It was never proved by any competent testimony of any kind that the petitioner had knowledge of the fact that the automobile was stolen at the time that it was transported in interstate commerce.

(2) In this case the attorney for the petitioner requested the Honorable Trial Judge to charge the jury,

> "That circumstances which would put a reasonable man on inquiry as to the car being stolen are not sufficient but that it has to be proven that circumstances are such that he knew the car was stolen." (R. 54.)

This is a perfectly proper charge and the Judge should have made it to the jury. The Judge, however, refused to so charge the jury and thereby committed reversible error. *McAdams v. U. S.*, 74 F. (2d) 37; *Piquett v. U. S.*, 81 F. (2d) 75; *Silverman v. U. S.*, 2 F. (2d) 716; *U. S. v. Wright*, 16 F. 112; *U. S. v. Babcock*, Fed. Case No. 14,487, 3 Dill. 581, 3 Cent. Law J. 143, 1 Cin. Law Bul. 52.

The Trial Judge stated that this was not a proper charge and refused to so instruct the jury. The petitioner's attorney, out of respect for the Court said, "Thank you. That's correct.", to the Judge. After, when the Judge had the bailiff hold the jury outside of the Courtroom door and requested if there were any exceptions to the Court's charge, the petitioner's attorney specifically excepted to the Judge's refusal to charge the request he had given the Court. When the Court of Appeals had this case before it for review, the Court of Appeals apparently did not read the record as far as the point where the petitioner's attorney objected to the Judge's refusal to charge because the Court of Appeals said this:

> "When the Court (Trial Court) had so charged, counsel for appellant said, 'Thank you. That's correct.'

Surely, after this, appellant should not be heard to question the correctness of the charge as given." (R. 99.)

We believe that it is reversible error for the Court of Appeals to affirm the Trial Court without a proper review of the record. We also urge that this was a correct and proper charge and should have been made by the Court.

ARGUMENT

Point I

The Court of Appeals erred in refusing to reverse the verdict and judgment of the Trial Court and in refusing to enter judgment for the petitioner, in that, the entire prosecution was based upon circumstantial evidence which as a matter of law was not sufficient to sustain a verdict of guilty, and which did not prove that the petitioner knew that the automobile was stolen at the time it was transported in interstate commerce.

We respectfully submit that there was no testimony presented in this case to prove that the petitioner knowingly and willfully transported a stolen automobile in interstate commerce knowing it to have been stolen. The only testimony that the United States submitted to prove that the petitioner knowingly and willfully transported a stolen automobile in interstate commerce knowing it to have been stolen was entirely circumstantial and did not in any way prove that important fact. The burden of proving knowledge was upon the United States and in proving its case it did not meet the standard of proof required by law in such cases in order to convict the petitioner. The act under which the petitioner was indicted in title 18, section 2312 of of the United States Code. This section reads as follows:

"Whoever transports in interstate or foreign commerce a motor vehicle or aircraft, knowing the same to

have been stolen, shall be fined not more than $5,000.00 or imprisoned not more than five years or both."

When the petitioner first met John Allen and Francis Raioni he offered to try and sell the automobile in question to some of the car dealers in Wilmington, Delaware. The petitioner took the automobile to a dealer by the name of Huffman and to a company named Allied Motors. (R. 36, 39.) The man, Raioni, was asking one thousand ($1,000.00) dollars for this automobile and when the petitioner took the automobile to Huffman he refused to purchase it, and Allied Motors refused to purchase it, too. (R. 36, 39.) This would certainly indicate that the automobile was not worth one thousand ($1,000.00) dollars on the used car market in Wilmington, Delaware, at that time. Thereafter, the petitioner bought the automobile from Raioni for seven hundred ($700.00) dollars. This would have appeared to any reasonable man, a fair price under the circumstances. At the time of the purchase Raioni showed petitioner an army card, a New York State driver's license and gave petitioner a bill of sale or title transfer. (R. 37.) This bill of sale was a New York State form and since the automobile was from that State it would certainly prove that Raioni was the owner of the automobile. After having bought the automobile in question, the petitioner stored it on an open public lot in Wilmington, Delaware. (R. 26, 40.) He did not hide the car as he would have if he had known that it was stolen. The petitioner started his trip South to Columbia, S. C., after dark in the evening. The United States Attorney believed that this was an indication that the petitioner had knowledge of the fact that the automobile was stolen. However, petitioner explained this. He proved that he was in the business of building houses. He proved that he had some houses being built at that very time. These business enterprises kept the petitioner in Wilmington,

Delaware, from Wednesday, midday to Thursday evening, a matter of a day and a half. (R. 34, 38.) The trip South was not made entirely at night. The petitioner traveled Thursday night and all day on Friday. (R. 18, 28.) If the petitioner had known or believed that the automobile was stolen he would not have traveled at all in the daytime. When the petitioner bought the automobile, he examined the body number and found that it corresponded with the number on the papers given petitioner by Raioni. The petitioner did not check the motor number but this number is very hard to locate and see and the only difference between the motor number and the number that petitioner was given as the motor number was that the real motor number was C-394859 and the number supplied to petitioner by Raioni was C-394359. The fact that petitioner did not get down into the greasy motor and check this number might indicate that he was careless but it would not indicate that he had knowledge that the automobile was stolen. After the petitioner reached Columbia, S. C., on a Friday afternoon, he went with a friend of his to a used car lot to try and find out what price the automobile would bring on the Columbia market. The petitioner offered to sell the automobile for fifteen hundred ($1,500.00) dollars. (R. 18, 19.) Even one of the witnesses for the United States testified that this was a fair price at which to sell such an automobile and was not a sacrifice price. (R. 7.) One of the prosecution witnesses testified that the petitioner did not know whether the automobile was a 1947 or 1948 model Chrysler. The witness who so testified was himself a used car dealer and the statement about the model of the automobile was made to him in the course of a trade. The statement, made under these circumstances, does not indicate that the petitioner did not know what model the automobile was. It merely shows that the petitioner was trying to get a good price for his car

and was engaging in some legitimate puffing of his car. (R. 6.) A short time thereafter the petitioner was stopped and arrested by the Columbia, S. C., police. When he was arrested he did not attempt to flee or to offer any resistance. He did not conceal anything from the police. (R. 8, 9.) In short, petitioner did nothing that would indicate that he knew that the automobile in which he was traveling was a stolen automobile. Every act of the petitioner while he was buying the automobile and during the entire time that he was in possession of the automobile showed conclusively that he did not have the slightest idea that the automobile was stolen. He acted as a man would have acted with an automobile that he thought that he owned and had every reason to believe that he did own.

There was no direct testimony in this case to prove that the petitioner knew that the automobile was stolen. All of the evidence against him was circumstantial. While it is true that a crime can be proved and a criminal convicted on the basis of circumstantial evidence, that evidence must be of a nature to clearly indicate the guilt of the accused and such was not the case in the trial that we are now discussing. The rule as to the weight and sufficiency of circumstantial evidence in criminal trials is set out in 20 Am. Jur., Evidence, section 1217.

> "Where circumstantial evidence is relied upon in a criminal prosecution, proof of a few facts or a multitude of facts all consistent with the supposition of guilt is not sufficient to warrant a verdict of guilty. In order to convict a person upon circumstantial evidence, it is necessary not only that the circumstances all concur to show that the prisoner committed the crime and be consistent with the hypothesis of guilt since that is to be compared with all of the facts proved, but that they be inconsistent with any other rational conclusion and exclude every other reasonable theory or hypothesis except that of guilt. The facts proved must be con-

sistent with each other and with the main fact sought to be proved. A reasonable doubt must be resolved in favor of the accused where a fact or circumstance is susceptible of two interpretations. If the circumstances tending to show the guilt of the accused are as consistent with his innocence as with his guilt, they are insufficient. In order to convict a person of a crime, the facts must be inconsistent with or such as to exclude, every reasonable hypothesis or theory of innocence."

The decisions of the Federal Courts mirror these principles. It is held that, where the prosecution depends entirely on circumstantial evidence for a conviction, it must not only be consistent with the guilt of the defendant, but it must be inconsistent with his innocence. *Morgan v. U. S.*, 159 F. (2d) 85; *Strickland v. U. S.*, 155 F. (2d) 167; *Paddock v. U. S.*, 79 F. (2d) 872. A crime may be proved by circumstantial evidence, but facts and circumstances shown should be consistent with each other and defendant's guilt and inconsistent with any reasonable theory of innocence. Where the evidence submitted by the prosecution, on any count, is as consistent with innocence as it is with guilt, the evidence is insufficient to sustain a verdict of guilty. It is in accordance with these hard and fast principles of law that the evidence against the petitioner must be tested. At no time in the trial did the prosecution bring forward any evidence that pointed conclusively to the petitioner's guilt. At all times the petitioner acted with the utmost *bona fides*. He never concealed anything but told the officials, into whose hands he fell, everything. He gave the names and addresses of the people with whom he dealt in purchasing the automobile. (R. 45.) Upon investigation all that he said proved to be true. These are not the trademarks or tokens of a man who has committed a crime. Rather, they represent the badges of an innocent man who is speaking the truth.

In the case of *Carmichael v. United States,* 13 F. (2d) 125, the defendant was convicted of transporting in interstate commerce, an automobile, knowing the same to have been stolen. The evidence showed that the car was stolen in St. Louis, Mo., and afterwards used by the defendant in East St. Louis, Ill., and subsequently traded to a dealer in East St. Louis, Ill. The defendant explained his possession of the automobile by stating that he bought it under a bill of sale at Illinois and Tenth Streets, East St. Louis, and one witness stated that he saw defendant looking at such an automobile at that place. The Court of Appeals reversed the conviction of defendant saying that there was not shown any such unexplained possession of recently stolen property as would raise a presumption that defendant had stolen the automobile and it necessarily follows that there is in the record neither evidence nor presumption of the transportion of the automobile.

Thus, we see in the case in hand, there was absolutely no unexplained evidence to show that the petitioner bought this automobile, knowing that it was stolen. There was no evidence to prove that petitioner knew that the car was stolen until after his arrest. All of the testimony against the petitioner was explained and all of it pointed as much to his innocence as to his guilt.

In the case of *Silverman v. United States,* 2 F. (2d) 716, the defendant was tried for unlawfully receiving stolen goods. The court held that the burden was on the prosecution to prove that the accused had knowledge or belief that the goods were stolen. In reversing the district court and in ordering a new trial the Court of Appeals said that the knowledge or belief of the receiver of stolen goods that the goods are stolen may be proved by evidence of facts or circumstances surrounding the transaction from which an inference of guilty knowledge would necessarily follow,

however, such an inference cannot arise from a mere failure to make inquiry. In the case in hand the prosecution relies almost entirely, in proving the knowledge of the petitioner that the automobile was stolen, upon the fact that petitioner made no more inquiry from Francis Raioni as to the title to the automobile than he did. Of course, if that is the basis of the case against the petitioner and his knowledge that the automobile was stolen cannot be proved otherwise, then the conviction of the petitioner should be reversed. It is essential to the petitioner's guilt that he knew the automobile was stolen when he transported it in interstate commerce. No circumstantial inference that the petitioner knew that the automobile was stolen can be derived from his dealings with Francis Raioni. Raioni showed the petitioner his papers and they all appeared in order. The petitioner paid Raioni a reasonable price for the automobile. The fact that the petitioner did not inquire any further into the title of the automobile cannot be taken as a circumstance against him. The rest of the testimony against the petitioner is so highly tenuous and slight that the conviction of the petitioner should be reversed.

During the entire trial of this case the petitioner was presumed to be innocent. The burden of proving the petitioner guilty rested upon the United States. This burden of proof did not shift. It remained upon the prosecution throughout to establish the petitioner's guilt by the evidence and the petitioner could not be called upon to explain or produce any proof until the prosecution, by the evidence it actually produced, established the petitioner's guilt beyond a reasonable doubt. *U. S. v. Wright,* 16 F. 112, *U. S. v. Babcock,* Fed. Cas No. 14,487, 3 Dill. 581, 3 Cent. Law J. 143, 1 Cin. Law Bul. 52. It follows then, that when knowledge is an element of the offense charged it must be proved by the prosecution before the petitioner can be found guilty.

Piquett v. U. S., 81 F. (2d) 75. The knowledge that the Chrysler automobile was stolen in this case was an element of the crime charged and it was incumbent upon the prosecution to prove that the petitioner knew this fact before he could be convicted. The prosecution in this case did not prove that the petitioner knew that the automobile was stolen. The petitioner was charged with knowingly and willfully transporting an automobile in interstate commerce while he knew that the automobile had been stolen. This knowledge was never proven by the United States. We have shown conclusively that there was absolutely no reason why the petitioner should have believed that the automobile in question was stolen. We have shown that the petitioner did not know that it was stolen, as can be seen by his actions in buying the car and after he took possession of the car. The evidence presented by the prosecution showed that the petitioner investigated the value of the car and paid what he found was a fair price for it. (R. 15, 23.) The petitioner made the vendor identify himself, which he did in a proper and reasonable manner. (R. 16, 25.) Thereafter, all of the acts of the petitioner indicated that he did not know that the automobile was stolen. He traveled in the daytime as well as at night. (R. 18, 28.) He stored the automobile in a public place. (R. 26, 40.) He checked the body number and found it corresponded correctly to the one given to him. (R. 40, 49.) He dealt with a man in the purchase of the automobile that the United States Agents afterward located. He tried to sell the automobile for a reasonable price and did not try to sacrifice it. (R. 7.) All of these facts show that the petitioner did not know that the automobile was stolen. They indicate clearly that the prosecution did not prove one of the most important elements of the crime charged, that is, the petitioner's knowledge that the Chrysler automobile was stolen at the time that he

transported it. This being the case, the petitioner was entitled to a directed verdict in his favor at the end of the government's case.

Upon appeal to the Court of Appeals for the Fourth Circuit that Court sustained the verdict and judgment of the District Court and this, we submit, was error. The Court of Appeals pointed out four specific matters in the testimony that it said sustained the verdict and judgment of the Lower Court. **First**, the Court said, "There was evidence that the automobile was purchased by defendant at an inadequate price;." We have shown by the Record in the case that the automobile was purchased at a reasonable price for the time and place at which it was purchased. (R. 15, 23, 36, 39.) Automobiles of this type, large, second-hand, were not bringing any price at that time in Wilmington. In fact the dealers were refusing to buy them. There was no testimony offered by the United States to refute this. There was no evidence to show that the automobile was purchased at an inadequate price and if the Court of Appeals so found it did so upon its own volition and not upon any testimony in the case. **Second**, the Court of Appeals said, "that he (petitioner) had it (automobile) driven away in the night time from the section in which it was stolen;." The petitioner made a clear explanation as to why he left Wilmington, Delaware in the evening. The petitioner explained about the work that he was doing and the business that he was engaged in, building houses. It was also shown that the automobile was driven during the daytime as well as at night and there was no effort on the part of petitioner to hide the automobile. (R. 18, 28, 34, 38.) The automobile was stored by petitioner on a public parking lot in the center of Wilmington, Delaware and it was not hidden. (R. 26, 40.) Therefore, we say, that in the face of these facts no evil intent or knowledge can be attached to the fact that

petitioner began his trip to Columbia, S. C. in the evening instead of in the morning. In this the Court of Appeals erred. The Court of Appeals was also mistaken when it stated that the automobile was driven away from the section in which it was stolen in the nighttime. The automobile was stolen in New York City and was driven away from Wilmington, Delaware by the petitioner. Wilmington, Delaware is over one hundred (100) miles away from New York City and by no conceivable stretch of the imagination can it be said to be in the same section as New York City. **Third,** the Honorable Court of Appeals said that there was evidence to support the conviction of petitioner because the testimony was, "that the front and rear license tags were different;". This is an erroneous statement of the testimony in the case. There was no testimony to the effect that the front and rear license tags were different. The testimony that the Court of Appeals is referring to is obviously that of Mr. Paul Lorick found at page 68 of the Record. There the witness said,

> "And, I walked in front of the automobile and I looked at the automobile and I saw a New York license on the car. And, I looked at them and I walked around to the back of the car and looked at the license there. It was a New York license. And, they had different brackets on the car.
>
> "Q. How's that?
>
> "A. They had different brackets on the license plates—different license brackets."

There is no testimony in the entire record to the effect that the license plates were different, as stated by the Court of Appeals. The Court of Appeals did not read the testimony carefully enough to interpret it properly. The brackets are the frames that hold the licenses in place. There are hundreds of reasons why an automobile might have to have a bracket replaced that would not point to the fact

that the car was stolen. There is no reason why an automobile would have a different license on the front and on the back. Anyone who saw an automobile equipped with two different license plates would know immediately that something about the automobile was not right. But this automobile did not have different license plates. It had different brackets. This fact did not in any way prove that the petitioner knew that the automobile had been stolen. So we feel that the Court of Appeals for the Fourth Circuit has done the petitioner grievous injury and has committed reversible error by not carefully and correctly reading and interpreting the record. **Fourth,** the Court of Appeals stated that there was sufficient evidence to sustain the verdict and judgment of the District Court, because,

> "When apprehended appellant told the officers that he was merely a 'little wheel' in the automobile theft ring and the 'big wheel' was one Allen, the man who had introduced to him the person from whom he claimed to have purchased the stolen car."

The petitioner gave a satisfactory explanation of this alleged statement. He said that when he was arrested he was confused and did not know that the automobile had been stolen, that it appeared to him that if it was stolen some ring had done it and he did not know anything about its theft, that he knew Allen, from whom he purchased the automobile, that Allen must have been in connection, in some way, with the man who sold petitioner the automobile, that petitioner did not know that the automobile was stolen until he reached Columbia, S. C., that petitioner had read in the Wilmington Evening Journal that a ring in New York was stealing ten automobiles a day off of the streets of New York. (R. 44, 45, 50.) It is obvious from this that the officers misunderstood what petitioner had said. The probative value of the statement referred to by the Court of Appeals to show that the petitioner knew that the auto-

mobile was stolen before his arrest is completely nullified by the petitioner's explanation.

From all of this, it is obvious that there was no testimony presented in the entire case to show that the petitioner transported this automobile in interstate commerce knowing the same to have been stolen. All of the testimony that the United States presented to prove this important fac was circumstantial and did not measure up to our judicial standard for circumstantial evidence to prove a fact.

In the case of *Cox v. United States,* 96 F. (2d) 41, the testimony showed that on Saturday, January 4th, 1936, the automobile in question was stolen in Pittsburg, Kansas. That on Saturday, December 28, 1935, appellant agreed to sell to one Powell a Chevrolet sedan that would be stolen within 75 miles of Joplin, Mo. That on Sunday, January 5, 1936, appellant delivered to Powell a Chevrolet sedan under circumstances clearly indicating that the automobile was stolen and that appellant knew it was stolen. That the automobile sold to Powell in Missouri on Sunday was of the same type, model and style as the automobile stolen in Kansas on Saturday, that the automobile was stolen shortly after the appellant agreed with Powell to procure him such an automobile within a radius of 75 miles of Joplin, that Powell subsequently entered a plea of guilty in the federal Court based upon his possession of the automobile sold by appellant to him. Other than this there was no evidence to show that the automobile stolen was the automobile sold to Powell. The appellant was convicted and appealed. Held, reversed. The Court said that taking the view of the evidence most favorable to the Government, the evidence is not inconsistent with the hypothesis that the automobile sold was a different automobile than that which was stolen. Evidence that is consistent with two conflicting hypotheses tends to prove neither, * * * and proof of

circumstances which, while consistent with guilt, are not inconsistent with innocence, will not support a conviction. See, *61 C. J. S., Motor Vehicles, Sec. 706.*

We submit, that, in the case in hand, the United States did not present one iota of evidence to show that the petitioner had knowledge that the automobile in question was stolen. All of the testimony by the prosecution was circumstantial and was just as consistent with the petitioner's innocence as with the petitioner's guilt. Therefore, we submit, that it was error on the part of the Honorable Trial Judge not to have directed a verdict in favor of the petitioner, and it was error on the part of the Honorable Court of Appeals not to have reversed the verdict and judgment of the Trial Court, and that this Honorable Court should issue a writ of *Certiorari* to the United States Court of Appeals for the Fourth Circuit in order that the decisions of the Courts below may be reviewed and determined by this Honorable Court.

Point II

The Honorable Court of Appeals for the Fourth Judicial Circuit erred in refusing to reverse the verdict and judgment of the Trial Court for failing to charge the jury as requested by the Attorney for petitioner,

> **"Circumstances which would put a reasonable man on inquiry as to the car being stolen are not sufficient, but that it has to be proven that the circumstances are such that he knew the car was stolen."**

At the trial of this case the petitioner's attorney requested the charge set forth in the exception. This charge was refused. The Honorable Court instead gave another charge. When the trial Judge had finished the petitioner's attorney said, "Thank you. That's correct." This remark was purely out of respect and politeness to the Court. It was not in any way an agreement that the charge given

by the Court was correct and the charge requested and refused was wrong. The Trial Judge then sent the jury out and instructed the bailiff to hold them outside of the Court room door until he found out if the attorneys had any exceptions to the charge. When the Trial Judge asked the attorneys if they had any exceptions to the charge the petitioner's attorney stated.

> "I except to that part of your Honor's charge which refused to charge the request I made."
> The Court said:
>
> "You mean your verbal request?"
>
> The Petitioner's attorney said, "Yes, sir." (R. 62, 63.)

This was a direct, absolute, and unequivocal exception to the refusal by the Trial Judge to make the charge requested. When this case was taken before the Court of Appeals this refusal to charge was urged as an error on the part of the Trial Judge. The Court of Appeals gave this point a summary treatment in its opinion on the appeal. The Court stated that after the petitioner's attorney said, "Thank you. That's correct," he could not be heard to question the correctness of the charge as given. This is a large price for the petitioner to have to pay for his attorney's politeness to the Trial Court and respect for that Court. This is also an indication that the review given the record of the case, by the Court of Appeals was not as thorough as it might have been. The Court of Appeals completely overlooked the fact that petitioner's attorney specifically excepted to the charge by the District Judge and to his refusal to charge the law as requested by petitioner's attorney. The Court of Appeals completely ignored the fact that petitioner's attorney made this exception. This exception by petitioner's attorney was timely and was properly made. The rule as to exceptions to the Court's charge is set forth in *53 Am. Jur., Trial, Section 827,*

> "Generally, however, objections or exceptions to instructions should be made at the conclusion of the charge, or at some appropriate moment before the case is finally given to the jury, so as to afford the Court an opportunity to correct the alleged error."

Rule 51 of the Rules of Civil Procedure for the United States District Courts provides as follows,

> "No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury."

This rule specifically provides that the District Judge shall give the attorneys opportunity to object to the charge as requested, "out of the hearing of the jury." The District Judge did this in this case, and as soon as he did petitioner's attorney made his objection. Petitioner's attorney had no opportunity before he made his objection, to object. The entire court proceeding from the time that the request to charge was made until the time that petitioner's attorney made his objection, only consumed a few minutes. In fact, the question concerning the request to charge was under discussion continuously up until the time that the objection was made. The Court of Appeals should have sent this case back to the District Court for a new trial because of the District Judge's refusal to charge the request made by petitioner's attorney. It was error on the part of the District Judge to refuse this charge. It was error on the part of the Court of Appeals to hold that the petitioner's attorney waived his right to object to the refusal to charge. It would be eminently proper for this Honorable Court to direct the Court of Appeals to certify the record in this case to this Honorable Court for review and to return this case to the District Court for another trial.

There can be no doubt that the requested charge was legally sound and proper. The United States could not convict the Appellant by merely showing circumstances which would put a reasonable man on inquiry as to whether or not the car was stolen. The United States must go further than this and prove circumstances that would show that the Petitioner did know that the car was stolen. These circumstances must prove that the Petitioner was guilty of transporting this Chrysler in interstate commerce when he knew that it was stolen. This knowledge must be proved beyond a reasonable doubt. Circumstances which would put a reasonable man on inquiry or would arouse reasonable suspicions are not sufficient to constitute guilty knowledge. Under this rule of law there is no evidence in this case to show that the Petitioner had knowledge that the automobile was stolen. This being true, the United States has failed to prove beyond a reasonable doubt that the Petitioner had guilty knowledge of the automobile being stolen and the Petitioner was entitled to a verdict at the hands of the jury. The circumstances proved by the government do not measure up to the requirements of the rule and are not such as to warrant a finding of the Petitioner's guilt beyond a reasonable doubt.

We have called the Court's attention to the case of *Silverman v. United States,* 2 F. (2d) 716, but we believe that it has a pertinent bearing on this point in this case. The Court there held that in prosecution for unlawfully receiving stolen goods the burden is on the government to prove that the accused had knowledge or belief that the goods were stolen. The Court said this:

> "This element of the offense may be proven by evidence of facts and circumstances surrounding the transaction, from which the inference of guilty knowledge would necessarily follow. It is error however, for the trial court to charge that, 'all the government need

to prove to a reasonable certainty here is that the defendants, to whichever one of them you find the evidence applies, had knowledge that the goods coming into his possession were not coming in a way to make his possession rightful;' and that, 'if either defendant was surrounded by circumstances which, in your judgment, as you understand him and see him should have advised him that the man who was attempting to clothe him with possession had a title so doubtful that he, the defendant, was put upon inquiry to find out where the man attempting to clothe him with possession * * * acquired his title, and that with his eyes open to this suspicious circumstance demanding an inquiry, he failed to make any inquiry but doggedly went to work against the impulse of these circumstances and reduced these tires to his possession, he must take the consequence.' "

The Court there held that in order for the United States to prove that a defendant knew that he was dealing with stolen goods the United States must prove facts from which the inference of this knowledge must **Necessarily** flow. This is the charge requested by the Petitioner's attorney in this instant case and refused by the Trial Court. The Court in the *Silverman case* went on to say that it was not enough to convict the defendant for the United States to prove that he was put on inquiry as to where his vendor acquired title to the goods. This, too, was the charge requested by the Petitioner's attorney and refused by the Court.

In order for a man to be convicted of transporting an automobile in interstate commerce, knowing the automobile to be stolen, it must be proved that the accused had knowledge of the fact that the automobile was stolen. When this fact is proved by circumstantial evidence, the evidence must be such that the inference of guilty knowledge must of a certainty be deduced therefrom. It is not enough for the United States to show circumstances from which the Petitioner, as a reasonable man, would be given cause to in-

quire as to the title to the automobile. The United States must prove more than this and show that the accused did acually know that the automobile was stolen.

There is no presumption of guilt in this case by reason of the petitioner having possession of the automobile which was stolen. The undisputed evidence shows that the petitioner purchased the car, paid value for it, received a New York certificate properly indorsed, and there is no evidence that he had any guilty knowledge of the car being stolen. Under the law it is the duty of the government to prove beyond a reasonable doubt that the petitioner had guilty knowledge of the car being stolen at the time he transported it in interstate commerce and circumstances which would put a reasonable man on inquiry or would arouse reasonable suspicions are not sufficient to constitute guilty knowledge, and there is no evidence in this case that the petitioner had guilty knowledge of the theft of the automobile. Considering all of the evidence and the testimony on the part of the petitioner and the government, the government failed to prove beyond a reasonable doubt that the petitioner had guilty knowledge of the car being stolen. The circumstances relied upon by the government do not measure up to the legal rule required, and the circumstances are not sufficient as proven to warrant the petitioner's conviction beyond a reasonable doubt.

In conclusion, we respectfully submit that the rulings of the District Court and of the Court of Appeals in this case were erroneous and the record should be certified to this Honorable Court for review.

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